

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

BENJAMIN G. MCDONALD and
KATHERINE F. MCDONALD, husband
and wife

Plaintiffs,

vs.

SAFEWAY, INC.;
SAFEWAY STORES INC. #1503;
SAFEWAY FUEL CENTER #1503;
JOHN DOE CORPORATIONS OR
PARTNERSHIPS 1-3; "JANE DOE"
GENERAL MANAGER and "JOHN
DOE" GENERAL MANAGER;
"JANE DOE" ASSISTANT MANAGER
and "JOHN DOE" ASSISTANT
MANAGER, wife and husband; and
"JOHN DOE" EMPLOYEES 1 - 5",

Defendants.

Case No.

COMPLAINT FOR PERSONAL
INJURIES

COMES NOW the Plaintiffs above named, by and through Plaintiffs' attorneys, Harold
D. Carr and Adam C. Cox, and for a cause of action against Defendants, and each of them, allege
as follows:

I. PLAINTIFFS

1.1 At all times material hereto, Plaintiffs BENJAMIN G. MCDONALD and KATHERINE F. MCDONALD were and are a married couple residing in Thurston County, Washington.

II. DEFENDANT

2.1 At all times material hereto, Defendant SAFEWAY, INC., was and is a foreign corporation doing business in Thurston County, Washington as an active and licensed corporation. That Safeway, Inc, owns, operates and manages SAFEWAY FUEL STATION #1503 and SAFEWAY STORES INC. #1503 located at 520 Cleveland Avenue SE, Suite A, Tumwater, Washington.

2.2 At all times material hereto, and SAFEWAY STORES INC. #1503 was the owner, occupier, possessor, operator, taxpayer, franchisor, and/or manager of real property and business operating at 520 Cleveland Avenue SE, Suite A, Tumwater, Washington (Thurston County Assessor Property Tax Parcel/Account number 99002034291).

2.3 SAFEWAY, INC. is assigned a Washington UBI number 600643518 with its registered agent for service of process as CT Corporation System, located at 711 Capitol Way S., Ste. 204, Olympia, Washington.

2.4 At all times material hereto, SAFEWAY STORES INC. #1503 is an unincorporated, unregistered taxpayer for Thurston County Assessor Property Tax Parcel/Account numbers 99002034291 operating at 520 Cleveland Avenue SE, Suite A, Tumwater, Washington.

2.5 According to <https://www.albertsoncompanies.com/careers/safeway-careers/our-story.html> (current as of January 5, 2021), there are over thirteen hundred (1,300).

1 Safeway Stores operating across the United States. Upon information and belief, at all times
2 material hereto, defendants JOHN DOE CORPORATIONS OR PARTNERSHIPS 1-3 are
3 believed to be an owner, occupier, possessor, operator, franchisee, franchisor, manager of the real
4 property, or entity with obligations for the creation, modification, upkeep, and compliance of the
5 premises in conformance with all applicable laws, standards, and codes, and/or employing "JANE
6 DOE" GENERAL MANAGER or "JOHN DOE" GENERAL MANAGER of SAFEWAY FUEL
7 STATION #1503 and SAFEWAY STORES INC. #1503 located at 520 Cleveland Avenue SE,
8 Suite A, Tumwater, Washington, at the time of Plaintiff's fall. The true names and capacities are
9 unknown to Plaintiff, but it is believed such entities control or operate under franchise agreements,
10 and subject to policies, procedures, rules, and standards for consistent operation and maintenance
11 of the Safeway Fuel station. JOHN DOE CORPORATIONS OR PARTNERSHIPS 1-3 may have
12 employed "JANE DOE" GENERAL MANAGER or "JOHN DOE" GENERAL MANAGER as
13 an employee, agent, and/or representative of SAFEWAY FUEL STATION #1503 and
14 SAFEWAY STORES INC. #1503 located at 520 Cleveland Avenue SE, Suite A, Tumwater,
15 Washington and was acting within the course and scope of his/her employment, and was
16 responsible for the implementation, supervision, training, monitoring, and control of the policies,
17 processes, procedures, standards, rules, and best practices for hazard identification, hazard
18 remediation, hazard guarding, hazard removal, and conditions of the Premises of SAFEWAY
19 FUEL STATION #1503 and SAFEWAY STORES INC. #1503 located at 520 Cleveland Avenue
20 SE, Suite A, Tumwater, Washington.

23 2.6 Upon information and belief, at all times material hereto, defendants "JANE DOE"
24 GENERAL MANAGER and "JOHN DOE" GENERAL MANAGER were wife and husband and
25 residents of Washington. Defendant "JANE DOE" GENERAL MANAGER or "JOHN DOE"
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1 GENERAL MANAGER was the General Manager of SAFEWAY FUEL STATION #1503 and
2 SAFEWAY STORES INC. #1503 located at 520 Cleveland Avenue SE, Suite A, Tumwater,
3 Washington, at the time of Plaintiff's fall, and was acting within the course and scope of his/her
4 employment, and was responsible for the implementation, supervision, training, monitoring, and
5 control of the policies, processes, procedures, standards, rules, and best practices for hazard
6 identification, hazard remediation, hazard guarding, hazard removal, and conditions of the
7 Premises of SAFEWAY FUEL STATION #1503 and SAFEWAY STORES INC. #1503 located
8 at 520 Cleveland Avenue SE, Suite A, Tumwater, Washington.

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10 2.7 Upon information and belief, at all times material hereto, defendants "JANE DOE"
11 ASSISTANT MANAGER and "JOHN DOE" ASSISTANT MANAGER were wife and husband
12 and residents of Washington. Defendant "JANE DOE" ASSISTANT MANAGER or "JOHN
13 DOE" ASSISTANT MANAGER was the General Manager of SAFEWAY FUEL STATION
14 #1503 and SAFEWAY STORES INC. #1503 located at 520 Cleveland Avenue SE, Suite A,
15 Tumwater, Washington, at the time of Plaintiff's fall, and was acting within the course and scope
16 of his/her employment, and was responsible for the implementation, supervision, training,
17 monitoring, and control of the policies, processes, procedures, standards, rules, and best practices
18 for hazard identification, hazard remediation, hazard guarding, hazard removal, and conditions of
19 the Premises of SAFEWAY FUEL STATION #1503 and SAFEWAY STORES INC. #1503
20 located at 520 Cleveland Avenue SE, Suite A, Tumwater, Washington.

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22 2.8 Defendants, "JOHN DOE EMPLOYEES 1- 5", on information and belief were
23 residents of Washington, at all times relevant and material to this Complaint. Fictitious
24 Defendants, "JOHN DOE EMPLOYEES 1-5", whose true names and capacities are unknown to
25 Plaintiffs, were employees, agents, and/or representatives of SAFEWAY FUEL STATION #1503
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and SAFEWAY STORES INC. #1503 located at 520 Cleveland Avenue SE, Suite A, Tumwater, Washington, acting within the course and scope of their respective employment at or on behalf of SAFEWAY FUEL STATION #1503 and SAFEWAY STORES INC. #1503 located at 520 Cleveland Avenue SE, Suite A, Tumwater, Washington. Upon information and belief, one or more of these employees negligently performed upkeep, and/or maintenance activities, giving rise to dangerous and hazardous conditions on the Premises, including unsafe walking surfaces existing on or about the incident date and time on the premises and grounds of SAFEWAY FUEL STATION #1503 and SAFEWAY STORES INC. #1503 located at 520 Cleveland Avenue SE, Suite A, Tumwater, Washington, which caused and/or contributed to Plaintiff BENJAMIN G. McDONALD'S fall, and the resulting injuries and damages. Plaintiff therefore sues these Defendants by such fictitious names. Plaintiffs reserves the right to amend the Complaint to state the true name and capacity of said "JOHN DOE EMPLOYEES 1-5".

III. JURISDICTION AND VENUE

3.1 Plaintiffs, BENJAMIN G. McDONALD and KATHERINE F. MCDONALD, are residents of Olympia, Thurston County, Washington.

3.2 Personal jurisdiction exists over Defendants. The "tortious act" and omissions giving rise to and causing Plaintiff's injury claims occurred in Thurston County, Washington, Defendants conduct business in Thurston County, Washington, and one or more corporate and/or individual defendants are a legal owner, occupier, possessor, operator, franchisee, taxpayer, and/or manager of the real property, business, and improvements located at 520 Cleveland Avenue SE, Suite A, Tumwater, Washington (Thurston County Assessor Property Tax Parcel/Account number 99002034291) known as SAFEWAY FUEL STATION #1503 and SAFEWAY STORES INC. #1503 and SAFEWAY, INC., and/or own, use, maintain, possess,

1 and control said real property and improvements thereon with duties and obligations to the public
2 and invitees for the creation, modification, upkeep, and compliance of the premises in
3 conformance with all applicable laws, standards, codes, and safe practices, including to discover
4 and warn of hazards on the property. RCW 4.12.020(3); RCW 4.12.025(1); RCW 4.12.025(3).

5 3.3 Venue is proper in Thurston County, Washington because the Defendants,
6 SAFEWAY FUEL STATION #1503 and SAFEWAY STORES INC. #1503 and SAFEWAY,
7 INC., own, use, maintain, possess, and control real property and improvements in Tumwater,
8 Thurston County, Washington, known as Safeway, transact business in Thurston County,
9 Washington, and direct, control, and monitor training, supervision, and oversight of its
10 employees, agents, and representatives, including, "JANE AND JOHN DOE GENERAL
11 MANAGERS", "JOHN AND JANE DOE ASSISTANT MANAGERS" and "JOHN DOE
12 EMPLOYEES 1-5" and the Defendants' acts and omissions giving rise to and causing Plaintiff
13 BENJAMIN G. McDONALD'S injuries and damages occurred in Thurston County, Washington.
14 RCW 4.12.020(3); RCW 4.12.025(1).

16 IV. FACTS

17 4.1 That on or about Friday, February 8, 2019, Plaintiff, BENJAMIN G. McDONALD,
18 parked his vehicle at SAFEWAY FUEL STATION #1503 located at 520 Cleveland Avenue SE,
19 Suite A, Tumwater, Washington designated as SAFEWAY FUEL STATION #1503. Plaintiff,
20 BENJAMIN G. McDONALD, was an invited on the property to transact business with one or
21 more defendants. Mr. McDonald parked his vehicle near a fuel pump, exited his vehicle, and
22 began walking around the rear of his vehicle to the passenger side where the fuel pump was
23 located. While walking around his vehicle, Plaintiff, BENJAMIN G. McDONALD's foot
24 encountered an unsafe, dangerous and hidden obstruction. As a consequence, he slipped and fell.
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1 4.2 At all times relevant and material to this lawsuit, Plaintiff, BENJAMIN G.
2 McDONALD, was an invitee at the property.

3 4.3 Defendants and their employees, agents, or servants had actual and/or constructive
4 knowledge of the dangerous and hazardous conditions on the Premises prior to Plaintiff
5 BENJAMIN G. McDONALD'S fall.

6 4.4 Despite having actual or constructive knowledge of the dangerous and hazardous
7 conditions on the Premises, Defendants did not warn, remediate, or correct the dangerous
8 conditions prior to or even after BENJAMIN G. McDONALD'S fall.

10 V. NEGLIGENCE

11 5.1 Upon information and belief, SAFEWAY, INC.; SAFEWAY STORES INC.
12 #1503; SAFEWAY FUEL CENTER #1503; JOHN DOE CORPORATIONS OR
13 PARTNERSHIPS 1-3; "JANE DOE" GENERAL MANAGER and "JOHN DOE" GENERAL
14 MANAGER; "JANE DOE" ASSISTANT MANAGER and "JOHN DOE" ASSISTANT
15 MANAGER, wife and husband; and "JOHN DOE" EMPLOYEES 1 - 5", are responsible for the
16 implementation, supervision, training, monitoring, and control of the policies, processes,
17 procedures, standards, rules, and best practices for hazard identification, hazard remediation,
18 hazard guarding, and hazard removal. Additionally, these defendants were responsible for
19 ensuring that all applicable codes and standards applicable to safe walking surfaces, walkways
20 changes in level, ADA compliance, and property maintenance (including, but not limited to
21 building codes and American Standards for Testing and Materials, and American National
22 Standards for Safety Colors) were being followed and implemented.

24 5.2 The Premises were held open as part of the business operation of Safeway, and
25 Defendants had actual and constructive knowledge and notice of the built, unmarked hazardous
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1 conditions existing on their property, and failed to warn, mark, redirect, remediate, or correct the
2 conditions, despite knowing or having a reason to know that pedestrians and business invitees
3 would proceed to encounter unmarked hazards in any common area of the Premises open to the
4 public, including: in the parking lot; ingress; egress; approaches towards the business; exits from
5 the building; locations for conducting activities beneficial to Safeway; and pathways for use by
6 persons of all mobility levels.

7 Under the doctrine of respondeat superior, SAFEWAY FUEL STATION #1503 and
8 SAFEWAY STORES INC. #1503 and SAFEWAY, INC., is liable for the acts and omissions of
9 its employees, agents, and representatives, including but not limited to "JANE AND JOHN DOE
10 GENERAL MANAGERS", "JOHN AND JANE DOE ASSISTANT MANAGERS" and "JOHN
11 DOE EMPLOYEES 1-5" which caused harm to its business invitee, BENJAMIN G.
12 McDONALD, in the operation of 520 Cleveland Avenue SE, Suite A, Tumwater, Washington,
13 designated as SAFEWAY FUEL STATION #1503 and SAFEWAY STORES INC. #1503.

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15 5.3 Defendants "JANE AND JOHN DOE GENERAL MANAGERS", "JOHN AND
16 JANE DOE ASSISTANT MANAGERS", the managers, assistant manager, and "JOHN DOE
17 EMPLOYEES 1-5" were negligent in failing to perform their respective duties to maintain 520
18 Cleveland Avenue SE, Suite A, Tumwater, Washington, designated as SAFEWAY FUEL
19 STATION #1503 and SAFEWAY STORES INC. #1503 in reasonably safe condition for their
20 invitees; creating hazardous conditions on the premises; permitting insufficient policies,
21 procedures, training, supervision, and enforcement of employees, agents, and representatives, to
22 take reasonable precautions to protect invitees from foreseeable harm by allowing employees to
23 engage-in and create hazardous and/or dangerous practices and conditions; and failing to
24 reasonably warn, abate, and guard invitees and guests of hazardous and dangerous practices and
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1 conditions existing at, created at, or maintained at 520 Cleveland Avenue SE, Suite A, Tumwater,
2 Washington 98499 designated as SAFEWAY FUEL STATION #1503 and SAFEWAY STORES
3 INC. #1503, its agents, representatives, or employees, or permitted to remain on the premises.
4 Such negligence proximately caused Plaintiff BENJAMIN McDONALD to fall and caused
5 Plaintiff's injuries, damages, and losses.

6 5.4 Defendants should have expected that BENJAMIN McDONALD would not
7 discover or realize the danger or would fail to protect himself against it, and Defendants failed to
8 exercise ordinary care to protect BENJAMIN McDONALD and other guests and invitees against
9 the danger.

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11 5.5 On the date of the occurrence, the Premises was under the ownership, control,
12 supervision, management, care, and maintenance of Defendants. The Defendants, by and through
13 their agents, servants, and employees, owed Plaintiff a duty to provide and maintain safe premises
14 for the benefit of its invitees. Defendants also had a duty to:

- 15 (a) Provide safe and adequate maintenance of the premises and grounds;
16 (b) Provide invitees with warning signs regarding unsafe areas and hidden dangers;
17 (c) Have a system to provide warnings to invitees by roping off, taping off and or/or
18 utilizing safety cones to mark unsafe areas and hidden dangers;
19 (d) Have a system in place to inspect the premises for unsafe conditions;
20 (e) Inspect the premises for unsafe conditions once its employees become aware or
21 should have become aware of potential unsafe conditions;
22 (f) Eliminate unsafe conditions on its premises once its employees become aware or
23 should become aware of unsafe conditions.
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25 5.6 Defendants breached their duties as set forth in paragraphs 4.3 – 4.4, and 5.1– 5.5.
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1 5.7 As a direct and proximate cause of Defendants' negligence, errors, omissions,
2 breach of their duties as set forth in paragraphs 4.3 – 4.4, and 5.1 – 5.5, Plaintiff, BENJAMIN
3 McDONALD, suffered personal injuries. As a direct and proximate cause of Defendants'
4 negligence, errors, omissions, breach of their duties as set forth in paragraphs 4.3 – 4.4, and 5.1 –
5 5.5, Plaintiff, KATHERINE F. MCDONALD, suffered losses and damages.

6 5.8 Defendants had actual and/or constructive notice of the defects and negligence
7 alleged in paragraphs 4.3 – 4.4, and 5.1 – 5.5.

8 **VI. NO COMPARATIVE FAULT**

9
10 6.1 Plaintiffs are without negligence of any kind or nature whatsoever and did not
11 contribute to their own injuries, losses, or damages in any way.

12 **VII. DAMAGES**

13 7.1 As a direct and proximate result of the aforementioned policies, practices,
14 procedures, acts, omissions, and negligence of Defendants, Plaintiff BENJAMIN McDONALD,
15 suffered personal injuries with resulting pain and suffering, personal damage, disability,
16 emotional trauma, emotional distress, and loss of enjoyment of life, harms, losses, and other
17 damages all believed to be permanent and which shall be described with greater particularity and
18 proven at the time of trial.

19
20 7.2 As a direct and proximate result of the aforementioned policies, practices,
21 procedures, acts, omissions, and negligence of Defendants, Plaintiff, BENJAMIN McDONALD,
22 has been required to seek medical and healthcare treatments, will continue to require medical and
23 healthcare treatments, medical expenses, out of pocket expenses, and other harms, losses, special
24 damages and general damages of a nature and amount all of which shall be described with greater
25 particularity and proven at the time of trial.

7.3 As a direct and proximate result of the aforementioned policies, practices, procedures, acts, omissions, and negligence of Defendants, KATHERINE F. MCDONALD suffered a loss of the care, companionship, society, love, and affection of his spouse and tortious interference, injury, harm and damage to their relationship, and is entitled to be compensated therefore.

7.4 None of the individual Defendants are members of the armed forces of the United States.

VIII. LIMITED PHYSICIAN/PATIENT WAIVER

8.1 Plaintiffs hereby waives the physician-patient privilege ONLY to the extent required by RCW 5.60.060, as limited by the Plaintiffs' constitutional rights of privacy, contractual rights of privacy, and the ethical obligation of physicians and attorneys not to engage in ex parte contact between a treating physician and the patient's legal adversaries.

IX. DEMAND FOR JURY TRIAL AND RELIEF

WHEREFORE, Plaintiffs demand a jury trial on all disputed issues, and pray for judgment against the Defendants, and each of them, jointly and severally, as follows:

1. For judgment in such amount as shall be proven at the time of trial.
2. For pre-judgment interest at the statutory rate on all items of special damages including, without limitation, expenses of medical care and treatment, property damage and loss of use of vehicle.

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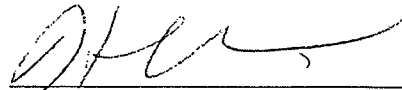
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1 3. For an award of attorney's fees and costs of suit incurred herein.

2 4. For such other and further relief as the Court may deem just and equitable.

3 Dated this 11 day of February, 2021.

4 HAROLD D. CARR, P.S.

5 

6 HAROLD CARR, WSBA #11767

7 ADAM C. COX, WSBA #35677

8 Attorneys for Plaintiff